

Recent Legislation and Enforcement Action Options

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| Enforcement Letter | ENF 01-05 |
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| Distribution | County Agricultural Commissioner |
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| Referrals | If you have any questions pertaining to this document, please contact your Senior Pesticide Use Specialist liaison. |
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Approval

Roy Rutz, Acting Chief
Pesticide Enforcement Branch
(916) 324-4100

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| Introduction | Several significant changes in the Food and Agricultural Code (FAC) occurred during California's Year 2000 legislative session. Chapter 806 (SB 1970) made changes to FAC sections 2181, 2182, 12976, 12999.4, 12999.5, 14008, and 14033. Some changes pertain to provisions not previously included when Governor Wilson implemented his Governor's Reorganization Plan of 1991. These provisions strengthen the role of the Department of Pesticide Regulation (DPR), the State's lead agency for the regulation of pesticide registration, sale, and use. The changes also offer options to the State's current civil penalty authority for violations of pesticide laws and regulations and allow county agricultural commissioners (CACs) to deny, revoke, or suspend a permit for refusal or neglect to pay a civil penalty levied for violations of pesticide laws. |
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Convene a trial board

When DPR was established as a department, authority to convene a trial board for alleged misconduct of a CAC remained with the Department of Food and Agriculture (DFA). Consequently, the Director of DPR would have had to show evidence to the Secretary of DFA and request the Secretary to convene a trial board in the event a review was necessary. The law now provides the Director with authority that is consistent with DPR's responsibility to oversee regulation of the registration, sale, and use of pesticides.

Civil penalties by the County Agricultural Commissioner

FAC section 12999.5 makes it unlawful and grounds for denial of a restricted materials permit for any person to refuse or neglect to pay a civil penalty pursuant to this section once the order is final. FAC section 14008 authorizes the CAC to refuse, revoke, or suspend a restricted materials permit for failure to pay a civil penalty or comply with a lawful order of a CAC that is final. These changes grant the CACs the discretion to locally address persons who fail to comply with their final penalty decision or lawful order.

Civil Penalties by the Director

FAC section 12999.6 authorizes the Director of DPR to initiate an enforcement action for violations committed within multiple jurisdictions or in the case of a priority investigation. Priority investigations are defined in the Cooperative Agreement between DPR, the California Agricultural Commissioners and Sealers Association, and the U. S. Environmental Protection Agency, Region IX.

This law was enacted to expand the Director's current authority to levy a civil penalty. Licensed pesticide businesses often operate in several different jurisdictions. Because CACs are not allowed to use violations outside their jurisdiction when considering civil penalties, many violations cannot be acted on appropriately. This law provides an alternative civil penalty option to address these violations by allowing the Director to levy civil penalties when violations occur in multiple jurisdictions or are particularly egregious, rather than referring the matter to the Office of the Attorney General.

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Decision to take state action Any decision to take state action would occur only after consultation between DPR and the CAC(s) or upon request by the CAC. Factors that tend to increase the likelihood of state action may include the following;

- **Recalcitrant Behavior:** Recalcitrant behavior by violators, particularly licensees, undermines the main purpose of California's Pesticide Regulatory Program, which is to protect public health, workers, and the environment. Recalcitrant behavior is persistent noncompliance, despite repeated attempts to gain compliance through county enforcement actions.
 - **Gravity of Violation:** A single violation may be of sufficient gravity to cause or potentially cause adverse consequences. State action may be the most appropriate and responsible course of action in cases of gross negligence, intentional wrongdoing, or general indifference to the consequences of the act.
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cc: Mr. Daniel J. Merkley, Agricultural Commissioners Liaison

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